G. R. S. 58

Previous references.

Jud. 075 e 1-2.8 12.140-06.

1907-8

(Sep: Revs)

File No. 43-190

Serial Nos. 1-2

Later references.

SR 17261-11881-2 B.4-12.

(5)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for September 1908

SUBJECT.

Re Inspection by the Commissioners Stamps of the record rooms of Civil & Criminal Courts.

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1) From the Registrar, Chief Court. No. 853/54 submits, for the Consideration of Govt., the resolution of Judges of the Chief Court re the inspection by the Stamp Commrs of the record rooms of Civil & Criminal Courts.

2) To the Registrar No. H.1267 of 3.9.08 states that the arrangement is only administrative measure, to give effect to which no express enabling provision of law is necessary.

GPB—8,000—7-4-07

MINUTE BY MR JUSTICE P.S. KRISHNA RAo,

1. I have carefully read the minute of my learned colleague (Mr Justice Chandrasekhara Aiyar) and also para 151 of Mr D.V. Narasinga Rao's "Report on the British Indian Board of Revenue with special reference to Mysore", but find it difficult to agree with the view that it is competent to the Government of Mysore by an executive order to confer on an officer other than The Deputy Commissioner of a District or any person specially authorized by him in that behalf, the power to inspect the records of Civil, Criminal & Revenue courts, and to impose upon the Judges of such courts the corresponding obligation of allowing such officer to have access to their record room. Such an obligation can only, in my opinion, be imposed by a Statute. Otherwise it is difficult to account for the existence of section 16 of the English Stamp Act,1891 (54 & 55 Victoria Ch: 39) and section 73 of the Indian Stamp Act. I cannot agree with my learned colleague that examining stamps &c with a view to see whether the provisions of Stamp and Court Fee's Acts have been duly carried out, is not an inspection of the records. It is nothing more than such an examination that the English and the Indian Acts contemplate, and yet the word used in the enactments in both these countries is "inspect".

2. Under section 73 of our Stamp Regulation the obligation on the part of the Judges of Civil, Criminal & Revenue Courts to allow a fiscal officer to inspect their records does exist, but the person entitled to make the inspection is the Deputy Commissioner or some person specially authorized by him in that behalf. Any extension of that obligation can only be effected by an amendment of the Regulation.

3. How the Local Governments in certain parts of British Indi appointed other officers than the Deputy Commissioner to be th officers entitled to make inspections of records of courts &c

not appear. It is possible that the appointment was made by the High Courts acting in the exercise of their powers under the Civil and Criminal Procedure Codes and under the Charters under which they were constituted.

4. It is true that the Governor-General in Council has power under section 75 of the Indian Stamp Act to frame rules to carry out generally the purposes of that Act, but it is very doubtful whether even the Governor-General in Council can pass a rule inconsistent with the Act; and instances are not wanting in which certain rules made by the Governor-General in Council under the section have been held by High Courts in British India to be ultra vires. The powers conferred on the Government of Mysore by section 75 of the Mysore Stamp Regulation are, it is conceived, subject to the same limitations. But even if it be assumed that the Government of Mysore can validly pass a rule under section 75 of the Mysore Stamp Regulation conferring on Stamp Commissioner or other officers the power of inspecting the records of courts, such a rule has not yet been passed, and the order of Government of 8th June 1907 can hardly be said to be a rule issued under that section.

5. The objection as to the legality of the issue of an executive order is all the greater in the case of the Court Fees Regulation, since that ~~section~~ Regulation contains no sections corresponding to sections 73 & 75 of the Stamp Regulation.

6. For these reasons, I am of opinion that we may respectfully submit our views to Government.

(Signed) P. S. Krishna Rao.

27th July 1907.

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Copy

For Registrar.

G.R.S. 26]

File No. 43 9 7

Serial No. 2

Diary No. of letter replied to 4548/07

No. H1267

23-9-08

General and Revenue Secretariat

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To The Registrar of the Chief Court of Mysore Bangalore

Sir,

With reference to your letter No. 853/54 dt. 29th July 1907 submitting for the consideration of Govt. the minutes of the Judges of the

over.

Date of issue 3rd Septr 08

Signed by W. McKenzie

SUBJECT.

Chief Court as regards
the matters undertaken
authority of the
Commissioners of Stamps
stamps & the duties of
of Stamps & inspect
the record rooms of
the Civil & Criminal
Courts under para 4
of G.O. No 7 (9083-125
-8th 140-06 & 8th June 06).
I accordingly
State
point out that the
difficulties in the way of
correspondence as
only an administrative
measure to give
effect to which no
express enabling
provision of law is
in the opinion of your
necessary.

List of enclosures.

1/9/08

Copied by

Examined by

MGCPB—30,000—16-2-05